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November 9, 2020

LOUISIANA ETHICS ADMINISTRATION PROGRAM
P.O. Box 4368
Baton Rouge, Louisiana 70821

Re: Request for Advisory Opinion o/b/o Ouachita Parish Sheriff's Office

To Whom It May Concern:

We are counsel for Ouachita Parish Sheriff Jay Russell and are writing on behalf of the Sheriff to request an advisory opinion on a situation that has developed in relation to certain contracts that may be entered into for services the Sheriff may need in the future.

Over the years, the Sheriff's Office has been obtaining embroidery services from a company conveniently located in the parish to affix nameplates, badge replicas, and other insignia on uniform shirts and other official gear needed in the operation of the Sheriff's Office. The Sheriff's Office has just learned that the a Sheriff's Deputy's spouse has recently obtained a controlling interest in the ownership of the embroidery company. The employee has indicated that he and his wife had previously entered into a prenuptial agreement, whereby the employee purportedly has no community property interest in the embroidery business.

The employee is employed as a Ouachita Deputy Sheriff in the patrol division of the Sheriff's Office. In the past, the embroidery company has worked on and has provided uniforms for all divisions within the Sheriff's Office, including the patrol division, under purchasing activities engaged in by the Sheriff's Office. The employee has not, and does not, participate in any Sheriff's Office decision-making with respect to the purchasing of any embroidery services solicited by the Sheriff's Office.

The Sheriff has asked whether purchasing services from the embroidery company while the employee's spouse owns a controlling interest in the company would be a violation of any provision of the Ethics Code. We believe the fact that the spouse of an employee of the Sheriff's Office owns a controlling interest of more than twenty-five percent in the embroidery company may be problematic under the Code. The Code prohibits a public servant, or any member of a public servant's immediate family (including children, the spouses of children, brothers and sisters and their spouses, parents, spouse, and spouse's parents under RS 42:1102(13)), or any entity in which they would have a controlling interest, from bidding on, or entering into any contract, subcontract, or other transaction "that is under the supervision or jurisdiction of the agency of such public servant." La. R.S. 42:1113(A)(1)(a).

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The Code also contains an exception for "[s]haring in any compensation received from the governmental entity by a person of which such public servant owns or controls any portion thereof, provided such compensation was received by such person as a result of having made the lowest sealed competitive bid on a contract or subcontract and having had such bid accepted by the governmental entity or the general contractor, and provided such public servant did not participate or assist in the procurement of the acceptance of such low bid, except as otherwise specifically prohibited by R.S. 42:1113." La. R.S. 42 :1123(4) (emphasis added). Our research indicates, however, that this exception does not apply to situations prohibited by Section 1113. *See, e.g.,* Ethics Advisory Opinions 80-16 and 81-78 (copies attached) ("the exception of the provisions of the Code set forth in Section 1123(4) of the Code likewise contain an exemption that renders the exception therein not applicable to situations specifically prohibited by Section 1113 of the Code"). In other words, if the potential arrangement violates Section 1113, then apparently the exception found at Section 1123(4) can not apply to the transaction.

Our reading of Section 1123(4) therefore leads us to the conclusion that the entity in which the spouse of a deputy sheriff owns a controlling interest would appear to be prohibited by Section 1113 of the Ethics Code from bidding on or entering into any contract with the Sheriff's Office to provide services or products to the Sheriff's Office. We could find no provision that would exempt a spouse of a public servant or an entity controlled by a spouse of a public servant from the coverage of the prohibitions of Section 1113 of the Ethics Code if there was a prenuptial agreement or separation of property agreement between the spouses. The affected spouse has expressed disagreement with our conclusions.

The Sheriff therefore has asked us to seek on his behalf an advisory opinion from the Board to officially settle the question of whether a company in which the spouse of a deputy sheriff owns a controlling interest of over 25% may bid on or enter into contracts with the Sheriff's Office that employs the subject deputy sheriff without violating La. R.S. 42:1113(A)(1)(a) or any other provision of the Ethics Code.

Your prompt assistance with this matter is greatly appreciated.

Sincerely,



Craig E. Frosch

CEF/gw

cc: Ouachita Parish Sheriff Jay Russell

encl.

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